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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUN - 2 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of the Commission's) PR Docket No. 93-35
Rules to Provide Exclusivity to) RM-7986
Qualified Private Paging Systems)
At 929-930 MHz)

To: The Commission

MOTION FOR EXPEDITED CONSIDERATION

Paging Network, Inc. ("PageNet"), pursuant to Sections 1.41 and 1.429(i) of the Commission's Rules, hereby respectfully requests the Commission to consider the merits of the petitions for reconsideration ^{1/} filed with respect to the Report and Order in the above-captioned proceeding, 8 FCC Rcd 8318 (1993) ("Order") and issue a decision on those petitions in an expeditious manner.

The petitions for reconsideration were filed on December 27, 1993. Comments on the petitions ^{2/} and other responsive

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- ^{1/} Petitions were filed by PageNet, the Association for Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc. ("NABER"), Metrocall, Inc., First National Paging Company, Inc. ("FNP"), American Mobilephone, Inc. ("AMI"), MAP Mobile Communications, Inc. ("MAP"), and Carl N. Davis d/b/a Afro-American Paging ("Davis").
- ^{2/} Comments were filed by PacTel Paging ("PacTel"), Arch Communications Group ("Arch"), American Paging, Inc. ("API"), Celpage, Inc., and American Digital Communications, Inc. ("ADC").


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pleadings ^{3/} were filed by several parties, and replies ^{4/} were filed, thus concluding the pleading cycle.

I. BACKGROUND OF THE PROCEEDING

In the Order, the Commission adopted rules modifying its regulation of licensing of private carrier paging ("PCP") systems operating in the 929-930 MHz band. Specifically, the Commission adopted a system of exclusive licensing of local, regional and nationwide PCP systems on 35 of the 40 PCP channels and defined the prerequisites for such exclusivity. In addition, the Commission established construction periods and technical and operational standards for exclusively-licensed PCP systems. Finally, the Commission provided for grandfathering of existing systems that meet the new exclusivity criteria.

These steps were taken to meet the public demand for competitive and innovative paging services. ^{5/} The exclusivity provisions were adopted to prevent frequency congestion and to provide incentives for licensees to invest in superior technology. ^{6/} In addition, the new rules were promulgated to encourage the successful development of local, regional and

^{3/} A partial opposition was filed by AMI.

^{4/} Reply comments were filed by MAP, API, and AirTouch Paging ("AirTouch") and a reply to opposition was filed by NABER. Communication Innovations Corporation ("CIC") filed untimely reply comments on May 18, 1994.

^{5/} Order at 8334.

^{6/} Id.

nationwide paging systems and, in so doing, to bring balance in the interests of small and large paging operators. 7/

II. THE ISSUES RAISED IN THE PETITIONS FOR RECONSIDERATION

The parties raised four basic issues in their petitions for reconsideration that affect the regulation and deployment of PCP service in the 929-930 MHz band. Those issues and the contentions of the parties are set forth below.

A. Extended Implementation for Incumbent Licensees to Meet Exclusivity Requirements

In the Order, the Commission adopted an extended implementation schedule for PCP applications filed with the Commission after October 14, 1993. 8/ This allows such qualifying applicants a maximum of three years to construct their systems and retain exclusivity. This slow growth option is not applicable to existing licensees seeking to qualify for exclusivity. Incumbent licensees must meet an eight month construction requirement in order to qualify for exclusivity. 9/ This includes the requirement that a multifrequency transmitter can only be counted on one of its operating frequencies in order to qualify for exclusivity. 10/

7/ Id.

8/ Order at 8326, § 90.496 of the Rules.

9/ Order at 8326, § 90.495(c) of the Rules.

10/ Order at 8323-8324, § 90.495(d) of the Rules.

Each of the parties filing petitions seeks reconsideration of at least some element of the qualifications for incumbent licensees to achieve exclusivity. NABER, MetroCall, AMI and Davis advocate extending the slow-growth option to incumbent licensees. PageNet proposes a two-year window for incumbents to operate on a single transmitter basis. FNP advocates a waiver process for incumbents who need additional time to justify their extension. Certain parties focus on the time from which the eight month period is calculated.

In responsive comments, other parties support the petitioners' positions. Arch, API, Celpage and MAP favor a longer transition for grandfathered systems to convert from multifrequency to single frequency transmitters. Celpage also advocates that the licensees of nationwide or regional systems be allowed to seek reinstatement of expired licenses that expired during the pendency of the rulemaking proceeding if the expired licenses will be part of the nationwide or regional system. PacTel and CIC also support extension of the slow growth option to incumbent licensees, but PacTel would impose financial showing requirements in certain instances. American Paging takes exception to MAP's request to expand the types of modifications that can be made to existing systems and retain exclusivity rights.

The justification advanced for the positions urging modification is that incumbent licensees should not be treated differently than new licensees for complying with the exclusivity requirements, particularly since most existing systems employ

multifrequency transmitters. Furthermore, the parties agree that the Commission's rationale for adopting the slow growth policy applies equally to incumbent as well as new licensees.

B. Define Regional Systems Along State Boundaries

The Commission defined regional systems for exclusivity purposes as consisting of at least 70 transmitters, located in a maximum of 12 states. ^{11/} In the top 30 markets, a regional system operator would have to meet the criteria for local exclusivity in that market. ^{12/} Since no co-channel station is permitted to be licensed within certain prescribed distances of any transmitter comprising part of a qualified regional system, a "contour protection" scheme governs licensing and expansion of regional PCP systems. ^{13/}

NABER and PageNet seek reconsideration of the definition of regional system boundaries and instead advocate that the geographic borders of the states comprising the regional systems should define the regional systems. NABER specifically recommends that the Commission grant exclusive licenses to the borders of any state where the applicant proposes to construct at least one transmitter, except in states with markets in the top 30, where 6-18 transmitters must be constructed. Also, NABER advocates that regional licensees should be allowed to locate transmitters anywhere in the region, as long as the prescribed mileage

^{11/} Order at 8322, § 90.495(a)(2) of the Rules.

^{12/} Id.

^{13/} § 90.495(b) of the Rules.

separations are observed. The general position is supported by PacTel, Arch, and American Paging in responsive pleadings. AMI and ADC seek exceptions to the regional exclusivity rules to fit their particular circumstances. AMI advocates that, where a regional licensee has exclusivity but does not serve a particular state in a top 30 market because it has not built out the requisite number of transmitters, the regional licensee's exclusive area should still include the area within the state actually served by the system. ADI requests that statewide exclusivity be considered secondary to applications for base stations or local exclusivity received before March 31, 1994 where a portion of the local system was operational before October 14, 1993. In response, NABER states that it does not oppose the exception suggested by AMI, but Air Touch advocates that AMI and ADI seek waivers for their particular situations.

The common arguments in support of statewide boundaries for regional systems are that such a policy will create a stable and predictable environment for the growth of the systems, allow customer demand to be met, and provide licensees incentive to expand services throughout the state.

C. Increase the Maximum Effective Radiated Power to 3500 Watts for Regional Systems

Although the Commission adopted a maximum effective radiated power ("ERP") for nationwide systems of 3500 watts, it retained the 1000 watt maximum for regional and local systems. ^{14/}

^{14/} Order at 8324, § 90.494(f)&(g) of the Rules.

NABER and PageNet urge the adoption of the 3500 watt ERP for regional systems. MAP seeks clarification of the 1000 watt limitation to the extent that it applies only to facilities that cover new service areas and that the 3500 watt ERP is permissible for facilities operating within existing service areas. PacTel, Arch, Celpage and API support the increase to 3500 watts for regional systems.

The parties support their recommendation with the arguments that regional systems necessitate broad territorial coverage, that higher power transmitters will enable licensees to offer better service at a lower cost, and that higher power limits will lead to development of regional systems.

D. Clarification of the One-Year Reapplication
Restriction After the Expiration of Exclusivity

In the Order, the Commission adopted a restriction on licensees from applying for any new station authorization in the proposed service area for which they failed to construct a qualified system. 15/

PageNet seeks clarification of this restriction to assure that it extends only to applications for transmitter sites on the frequency for which the applicant applied for exclusivity and within the contours of the sites not built. MAP supports PageNet's position. In support of the request, PageNet states that nothing in the Order suggests that the prohibition should extend to additional frequencies and that a contrary result would not be in the public interest. Furthermore, PageNet argues that a

15/ Order at 8327, § 90.495(c)(2).

prohibition against seeking additional frequencies in the area contained within the contours of the transmitter that the licensee failed to build is a sufficient incentive to achieve the Commission's objective.

III. THE NEED FOR EXPEDITED CONSIDERATION

The issues raised by the parties filing reconsideration petitions are critical to the PCP licensees and their existing and potential customers. Resolution of the issues explored above is necessary for the future development of local, regional and nationwide PCP systems to proceed expeditiously. Licensees of these PCP systems have planned their systems and are moving forward to implement those systems to the extent possible. However, certainty with respect to the reconsideration issues is essential so that the system licensees can make the necessary economic and legal commitments for full implementation of the systems and for service to be offered to the public on an expedited basis.

For these reasons, immediate resolution of the issues is necessary and in the public interest. Therefore, PageNet urges the Commission to grant its motion and issue an order resolving the issues raised on reconsideration concerning private carrier paging regulation.

IV. CONCLUSION

For the reasons stated herein, PageNet requests the Commission to adopt an order that resolves the arguments raised in the reconsideration petitions in this proceeding.

Respectfully submitted,

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June 2, 1994

CERTIFICATE OF SERVICE

I, Courtenay P. Adams, hereby certify that a copy of the foregoing "Motion for Expedited Consideration" was sent, this 2nd day of June 1994, by first class U.S. mail, postage prepaid, to the following:

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